



Missouri Department of Natural Resources

Clean Water Commission Water Pollution Control Program

Meeting Minutes

June 18, 2003

MISSOURI CLEAN WATER COMMISSION MEETING

June 18, 2003

Holiday Inn

Cape Girardeau, Missouri

MINUTES

Present

Thomas A. Herrmann, Chairman, Missouri Clean Water Commission
Davis D. Minton, Vice-Chairman, Missouri Clean Water Commission
William A. Easley, Jr., Commissioner, Missouri Clean Water Commission
Janice Schnake Greene, Commissioner, Missouri Clean Water Commission
Paul E. Hauser, Commissioner, Missouri Clean Water Commission
Cosette D. Kelly, Commissioner, Missouri Clean Water Commission
Kristin M. Perry, Commissioner, Missouri Clean Water Commission

Mike Alesandrini, St. Louis Regional Commerce and Growth Assoc., St. Louis, Missouri
Verel Benson, FAPRI, Columbia, Missouri
Bryan Brody, Missouri Coalition for the Environment, St. Louis, Missouri
Robert Brundage, Mo-Ag, Princeton, Missouri
Loring Bullard, Watershed Committee of the Ozarks, Springfield, Missouri
Patrick Costello, Region VII EPA, Kansas City, Kansas
Ann Crawford, Department of Natural Resources, Jefferson City, Missouri
Cheryl Crisler, Region VII EPA, Kansas City, Kansas
John Ford, Department of Natural Resources, Jefferson City, Missouri
Charles Gamble, St. Francois Co. SWCD, Farmington, Missouri
John Griffith, Missouri Coalition for the Environment, St. Louis, Missouri
Bart Hager, Metropolitan St. Louis Sewer District, Fenton, Missouri
Scott Harding, SCI Engineering, Inc., Arnold, Missouri
Ted Heisel, Missouri Coalition for the Environment, St. Louis, Missouri
Tod Hudson, Department of Natural Resources, Jefferson City, Missouri
Richard Laux, Department of Natural Resources, Jefferson City, Missouri
Jim Lunan, Holcim, Bloomsdale, Missouri
Tim Mattingly, Department of Natural Resources, Poplar Bluff, Missouri
Kevin Mohammadi, Department of Natural Resources, Jefferson City, Missouri
Denis Murphy, The Doe Run Company, Viburnum, Missouri
Deborah Neff, Assistant Attorney General, Jefferson City, Missouri
Marvin Nesbit, Schultz Engineering Services, Poplar Bluff, Missouri
Anna Paschke, Missouri Coalition for the Environment, St. Louis, Missouri
Charles Perkins, St. Francois County SWCD, Farmington, Missouri
John Pozzo, Ameren, St. Louis, Missouri
Lois Reborne, Bryant Watershed Project, West Plains, Missouri
Phil Schroeder, Department of Natural Resources, Jefferson City, Missouri
Becky Shannon, Department of Natural Resources, Jefferson City, Missouri

Buffy Skinner, Metropolitan St. Louis Sewer District, St. Louis, Missouri
Scott B. Totten, Department of Natural Resources, Jefferson City, Missouri
Edward Templeton, Big River Project, Farmington, Missouri
Jeanette Unsell, Watershed Committee of the Ozarks, Springfield, Missouri
Diane Waidelich, Secretary, Missouri Clean Water Commission

Chairman Herrmann called the meeting to order at approximately 9:10 a.m. and introduced Commissioners Greene, Perry, Kelly, Easley and Hauser; Diane Waidelich, Secretary, and Deborah Neff, Assistant Attorney General. Vice-Chairman Minton arrived at approximately 9:20 a.m. Director of Staff Jim Hull was not present. Kevin Mohammadi attended for Mr. Hull. Gary Gaines, Director of the Southeast Regional Office, introduced Tim Mattingly of his staff.

Administrative Matters

Adoption of April 23, 2003 Commission Meeting Minutes

Commissioner Easley moved to **approve the April 23, 2003 commission meeting minutes** as submitted by staff; seconded by Commissioner Hauser and unanimously approved with Commissioner Minton absent.

Request for Loan Increase From the City of Ellington

Ann Crawford, Acting Chief of the Financial Services Section, explained the City of Ellington is on the State Revolving Fund fundable list for \$500,000. The community anticipated a grant from Economic Development which they will not be getting necessitating the request to the Department of Natural Resources for \$250,000. Ms. Crawford stated there is approximately \$17.9 million in unobligated leveraged loan funds and recommended increasing Ellington's loan amount.

Chairman Herrmann asked that, in the future, a description of the location of facilities to be discussed be included in the briefing packets.

Commissioner Greene moved to **accept the staff recommendation regarding the City of Ellington**; seconded by Commissioner Kelly and unanimously passed with Commissioner Minton absent.

Request for Small Borrower Loan From the City of Browning

Ms. Crawford reported the City of Browning requested \$100,000 from the small borrower program. Monticello did not need its \$100,000 loan so this amount is available to refurbish Browning's treatment plant, sewer pump station, and discharge pipe structure. Ms. Crawford recommended approval of this request so that staff can work with the community to develop a funding package with other agencies.

Commissioner Perry asked if Monticello released these funds and if another project was in line for that money.

Ms. Crawford responded Monticello's project has been bid, is underway, and there was no other project anticipating this funding.

Commissioner Greene moved to **approve the staff recommendation regarding the City of Browning's request**; seconded by Commissioner Easley and unanimously passed with Commissioner Minton absent.

Update on Status of Phosphorus Grants

Ms. Crawford reported all the applicants that originally applied for the phosphorus grants and were fundable are now under construction. The approximately \$338,000 remaining is available for Branson West. Staff is working with the city to see if they are interested in this amount since they needed over \$1 million to complete their project. Ms. Crawford explained there is no more federal money so staff is working with other agencies to try to get them funded but have not been successful to date.

Commissioner Greene asked if staff will work to fund Diggins and Fremont Hills if Branson West is not interested in the money.

Ms. Crawford explained the issue would have to be brought before the commission if that did occur but she believes Branson West will want the funds. She continued that staff is hoping to fund Diggins under the Hardship Grant program which would include the phosphorus portion.

Chairman Herrmann asked if there are other communities needing phosphorus grants besides these three communities.

Ms. Crawford stated Clever, Crane, Galena, Reeds Spring, and Sparta did not apply. Diggins and Fremont Hills did apply but do not have infrastructure money. Staff would be able to fund the Fremont Hills project if Branson West does not make use of the money.

Chairman Herrmann asked if the five communities that have not applied have been reminded that time is running out.

Ms. Crawford acknowledged that they have been informed.

Festus/Crystal City Variance Schedule Modification Request

Mr. Laux, Water Pollution Control Program Permits Section, reported Festus and Crystal City have asked for approval of a schedule change related to losing a local bond election and having to reschedule that. This affects the interim deadlines of the schedule previously approved by the commission. This schedule relates to moving the discharge from the current stream to the Mississippi River. Mr. Laux noted staff believes this request is appropriate since the bond issue did fail. The final dates are related to a court case with the American Canoe Association. The Attorney General's Office recommended, and the commission approved, conditioning the approval of the original variance so that it wouldn't affect the court case and the order from the court. Mr. Laux requested the commission approve the changes in the interim dates as requested by the cities.

Commissioner Easley moved to **accept the staff recommendation regarding the Festus and Crystal City variance**; seconded by Commissioner Hauser and unanimously passed with Commissioner Minton abstaining.

Permit Efficiencies Update

Mr. Schroeder, Chief of the Water Pollution Control Program Permits Section, reported the number of issued permits that are unrenewed and are considered backlogged. Of the 13,000 permits on record, about 1,000 permits have not been renewed or terminated by the permit holder. Staff is now at a point where they can start defining a regular reporting methodology. Mr. Schroeder asked for suggestions on how to present the information to the commission. About 100 permits are being issued every two weeks which is enough to keep the backlog from getting worse but it's not addressing the backlog. Resources toward the effort need to be increased or the load needs to be lightened. Mr. Schroeder noted the Permits Manual is still under development and staff is still working on ways of better coordinating with the regional offices who have permit writing staff and developing training sessions.

Commissioner Greene asked if this report includes permittees who have not reapplied and if there is any way to take those out of the report.

Mr. Schroeder replied the report includes all permits that are expired. The reasons may be that the facility actually does not need a permit but staff has not been notified that the facility has been closed and termination applied for. Mr. Schroeder stated the only way to remove those from the report is for staff to contact the applicant to get information that would convince staff the facility is closed. It's being done but with the resource drain it is hard to get to all these facilities.

Commissioner Greene asked if Mr. Schroeder could guess what the number of these permits would be.

Mr. Schroeder noted a guess would be 50 percent are facilities that have applications and the other 50 percent are those that have not contacted staff.

Mr. Schroeder informed the commission they will be hearing a proposed amendment at the July commission meeting regarding permit-by-rule, which reduces staff workload and has a lot of potential. Over-the-counter permits allow staff to issue permits with a one-day turnaround time. Mr. Schroeder continued that vacancies need to be filled but that is difficult with the budget situation.

Mr. Schroeder explained acronyms as well the permit types and process sequence that will be represented in the reports. He continued by explaining the reports on Performance Report by Permit Type and Permit Status Report by Region. Mr. Schroeder suggested averaging the total number of days from start to finish of a permit. He recommended presenting performance every three months for the last three-month period.

Commissioner Minton asked how it will be determined if there is a certain type of permit that staff can issue very quickly or the permits that take much longer to issue if only an average is identified.

Mr. Schroeder responded the Permit Status Report by Region lists the individual permits and the amount of time it took to get through the various phases.

Commissioner Easley asked if the days are working or calendar.

Mr. Schroeder replied they are calendar days.

Commissioner Greene asked if the statute reads calendar days.

Mr. Schroeder responded the statute is 60 or 180 calendar days.

Commissioner Perry noted this is great and gives staff a chance to analyze the amount of time for technical reviews on certain types of permits.

Mr. Schroeder noted each type of permit will require a little different effort so a little higher average review time for some types of permits can be expected. The report allows staff to focus on those permits that seem to be the sticking point. Completeness checks should not take more than ten days. That internal timeline is being met but if staff sees this taking longer, that phase will be looked at to see why that occurred.

Commissioner Perry asked how long this tracking system has been operating and if there was a reduction in the various phases since it was implemented.

Mr. Schroeder replied it has not been implemented long enough to establish trends. He continued that there is still some difficulty with data entry accuracy regarding start and end dates for each phase. The public notice phase is a complete public participation phase rather than just the public notice. Mr. Schroeder suggested providing graphs when enough data to show trends of improvements is available.

Commissioner Perry suggested using whatever is the most efficient that gives the most information.

Mr. Schroeder replied that was the design criteria for this system. The earlier Permit Action Management System became very burdensome because of the amount of data that was being required. The CATS system is the bare minimum to present this data to the commission and to utilize internally for targeting improvements. Mr. Schroeder stated while it's an enormous effort to enter 900 data points into a system, it's not much when you issue 250 permits per month. Information from this system is automatically transferred into the Water Quality Information System.

Commissioner Perry asked if there isn't a rule that something has to be done in a certain amount of time.

Mr. Schroeder noted there are some internal policies staff is trying to establish for each of the four major permitting steps but he didn't know of any rules or policies from the commission.

Commissioner Minton noted the permit fee has to be refunded if the permit is not issued in the time that is allocated.

Mr. Schroeder responded that is correct and that is why applications need to be returned when applicants are not following up with needed information.

Commissioner Perry asked if this database can also be used to check on the status of a permit review when an applicant requests information on the status.

Mr. Schroeder replied it can be used for this but staff would want to confirm the status with the file. He noted it is a great way for staff to target reviews to make sure that staff is following the statutory timelines. As staff gets better with data entry and utilizing the reports, the accuracy will increase.

Commissioner Perry asked if there is some sort of alarm that notifies staff they are getting down to the last few days.

Mr. Schroeder replied permit writers are being asked to look at the computer clock to see if the review is going as it should be. He noted staff plans to bring a report to the commission at every other meeting.

Commissioner Perry noted the reports have gotten better each time.

303(d) List

Pat Costello, state water quality standards coordinator with Region VII EPA, stated he coordinated the agency's review of the Missouri 303(d) List submission for 2002. He introduced Cheryl Crisler, Manager of the Water Resources Protection Branch. Mr. Costello stated after conducting a very concerted and intensive team effort in reviewing Missouri's submission, EPA determined to partially approve and partially disapprove the list. A letter stating this along with supporting documentation was sent to the state on April 29, 2003. EPA's public notice regarding its proposed action to add and or add back waters and pollutants of concern to the list was issued on May 1, 2003. EPA is now accepting written public comment on the changes proposed by EPA regarding delistings, some waters added for the first time based on public comment and pollutants, and some alterations that the state had made.

Mr. Costello reported the decision support document along with the administrative record are available in public libraries around the state. Public notice and fact sheet information is also available on the Region VII EPA web site.

Mr. Costello provided the following summary:

- Waterbodies and associated pollutants that are being added or added back total 63
- 46 of these waterbodies that EPA is adding back were delisted by the state without sufficient data or documentation
- Of those 46, there were 35 waterbodies that were formerly listed for sediment in 1998 but were converted to habitat loss by the state and subsequently delisted
- Based on EPA's review, the information from the 1998 list that was for sediment listing of these waters still supported sediment as a pollutant of concern so EPA maintains that sediment should be maintained for those 35 waterbodies.
- There were 10 other waterbodies where there were miscellaneous delistings associated with BOD, nonfilterable residue, atrazine, and unknown.
- EPA added chlordane and PCBs for the entire length of the Missouri River based on the state's own fish advisory.
- There were two segments where EPA added mercury based on their retrieval of data from the STORET system.
- Habitat loss for both the Missouri and Mississippi Rivers, which they were originally listed for, is no longer on the list for those big rivers. This is based on the information that EPA reviewed that was provided initially by the state to support habitat loss. There was nothing in the reports and studies that the Department of Natural Resources had used as a basis for habitat loss that pointed to a specific pollutant as causing a problem. EPA concurs with the state's removal of habitat loss because habitat loss is not a specific pollutant in this case; it is because of instream modifications and structures that have caused an alteration of the River itself. That's not saying that habitat loss is not a problem but rather that it is not appropriate in this context to be listed as a pollutant for TMDL development.

- Of the original 63 waterbodies, four waterbodies were added based on comments and information received from the state during their public comment period. EPA has reviewed the comments received during this comment period and made some determinations that four waterbodies needed to be added to the list.
- There were 13 new waterbodies added based on EPA's review of the state's monitoring report on the 26 waterbodies which EPA reviewed under terms of the Consent Decree.
- For the 30 waterbodies that were retained by the state from the 1998 list, EPA is adding back pollutants that were removed by the state without sufficient data or information.
- 14 of these were waterbodies which were listed for sediment which were then converted to Nonvolatile Suspended Solids (NVSS) by the state. Converting sediment to NVSS or VSS excludes the possible contribution of the fraction that is not listed. The arbitrary conversion from one to the other did not acknowledge that there may be a possible contribution from the one that they did not list for.
- There were 13 waterbodies that were listed in 1998 for nonfilterable residue and these were converted to volatile suspended solids by the state. Nonfilterable residue is being added back because EPA felt the state excluded possible contribution of nonvolatile suspended solid fraction.
- Ammonia has been added back to two waterbodies because it was removed by the state without any documentation or data to support the removal.
- There was one other waterbody where there was low dissolved oxygen and was removed by the state without sufficient documentation or data that EPA is adding back.
- There were two retained waterbodies from the 1998 list where EPA is adding new pollutants: the Mississippi River where EPA has added chlordane and PCBs for the entire length based on the state fish advisory for Sturgeon and Sturgeon eggs.
- Habitat loss was removed by the state and EPA concurs because there was no information provided by the state that identified a specific pollutant that would be contributing to habitat loss.
- Benzopyrene was found in the Blue River so this will be added as a pollutant of concern.
- EPA has approved delisting of 17 waterbodies, adding 40 waterbodies that were found to have mercury, 14 other waterbodies were added for other miscellaneous pollutants for which data and documentation supporting this was provided.

Mr. Costello stated EPA will accept public comments until June 30, 2003 after which a responsiveness summary will be prepared and distributed. EPA will then make the final decision on Missouri's 2002 303(d) List and send the final list to the state.

Chairman Herrmann asked if all streams listed on the 303(d) List, except those listed for mercury, must have a TMDL prepared.

Mr. Costello acknowledged that is correct.

Chairman Herrmann noted the 305(b) List defines threatened streams rather than impaired and the law says that those are streams for which more data must be gathered in order to determine if the stream is impaired. He asked why a stream is not a 305(b) stream rather than a 303(d) stream if there is an unspecified or unknown pollutant.

Mr. Costello replied if a waterbody was listed as they have been in the past for an unknown or unspecified pollutant, it was based on biological assessment. A specific pollutant may not have been identified but it's the state's prerogative to list the waterbody for an unknown or unspecified pollutant as long as the basis for the listing would be on a biological assessment which would indicate that the diversity of aquatic life in the stream or the numbers are deficient. Mr. Costello stated EPA supports listing in that manner and, through further monitoring, specific pollutants can be determined. He continued that EPA does not take issue with the state for listing for an unknown or unspecified pollutant. It's based on the fact that they have done a biological assessment.

Chairman Herrmann stated if EPA is restoring streams to the list they are taking exception with the commission which represents the state.

Deborah Neff, Assistant Attorney General, noted this goes back to the 1998 list when the commission submitted three categories to EPA. One of these categories designated that the commission needed more information before they could determine if it was appropriate to list these streams. EPA said they would not recognize three categories and said all the streams needed to have TMDLs developed. When the commission realized that would happen, they turned around and delisted the streams that had unknown pollutants because the commission still believed more information was needed. EPA then put those back on the list and staff can't give EPA more information because it did not exist then and does not exist now.

Commissioner Minton stated the 1998 303(d) List is a grouping of all the streams the commission had broken down into the categories the commission believed additional study was needed on before they were actually included in the list. He continued if the commission had known what EPA's action would be, the commission probably would have included these waters on the 305(b) list as opposed to the 303(d) List. Commissioner Minton noted the commission wanted to recognize those streams as needing further study. EPA then combined all the waterbodies which was never the commission's intention. Commissioner Minton stated it will be extremely difficult to delist waterbodies for which information to list never existed. An enormous amount of time will be spent developing TMDLs for streams that were never intended to be on the 303(d) List. Commissioner Minton noted possibly with further monitoring those streams may be included but the data was never there to support adding them to the 303(d) List. He asked if EPA's standards are more stringent than the commission's since they added those waters and now EPA is proposing to add 13 more waters to the list.

Mr. Costello noted there is different interpretation of the same data.

Commissioner Minton noted if there is not a definitive set of standards used by everyone, through a rulemaking procedure and methodology procedure, it comes down to whose interpretation of the data is correct. He stated as a commissioner, a citizen of the state, and someone representing the staff, he hates to know that an enormous amount of time will be spent developing TMDLs when they were unnecessary. Commissioner Minton stated if it's this arbitrary, there needs to be an assessment of the entire process because there is an enormous amount of tax money and economic advantage and disadvantage associated with this. He continued there is something inherently wrong with the system when the public is subjected to developing load limits on these streams when there was no need for it or it's a very subjective determination. There has to be data before streams can just arbitrarily been added to the list. Commissioner Minton noted the methodology and listing process now has to be completed through a rulemaking and any information submitted after August 28, 2002 should go through the rulemaking process. He noted the commission never intended for the 303(d) List to look like it did in 1998. Had the commission known what EPA was going to do, the commission might have submitted a different list. Commissioner Minton asked if EPA had the data to support putting the 60 some streams on the list.

Mr. Costello responded EPA looked at the original basis for the listing of those waters.

Ms. Crisler noted the issue seems to be the waterbodies that are being added back for sediment. She continued if the state has information during the comment period that can demonstrate that those waterbodies are not impaired by sediment, which is the basis for the original addition, then that needs to be provided to EPA.

Commissioner Minton noted there was no information to put the waterbodies on the list in the first place.

Ms. Crisler responded the discussion on the 1998 list is closed. If there was no basis for the listing for sediment, that was not provided during the 2002 submission and needs to be provided. The data that was used to add the four waterbodies was data that was available before that submission to EPA.

Commissioner Minton responded EPA's standards for those four waterbodies are different from the commission's otherwise the commission would have included them.

Ms. Crisler responded she cannot speak to why the data did not surface but EPA is obliged to look at the public comment. If there was data provided that was not specifically addressed by the state, EPA is obliged to do that. There was data referenced or provided.

Responding to Commissioner Minton's question regarding the 13 waterbodies, Mr. Costello responded EPA had received one report from the state earlier in the year and then a revised monitoring report just after the state had submitted its list to EPA.

Commissioner Minton asked if the commission would include those 13 waterbodies if they were reviewed today.

Ms. Shannon replied staff reviewed the information submitted to EPA and made the decision at that time that they should not be included.

Commissioner Minton stated once again there is the difference of opinion of what criteria it takes to be on the 303(d) List.

Chairman Herrmann stated the 1998 list cannot be ignored. EPA's basis for inclusion of most of these streams on the 2002 list is that they were on the 1998 list. Going back to the guidance provided for the preparation of the 1998 list, there were three categories of listings. One was the priority listing which really had impaired streams. Categories two and three were not defined as impaired but were in effect streams that should have been on the 305(b) list.

Commissioner Minton noted he did not understand the ramifications for not objecting to the 1998 list. He continued the commission was under so much litigation he thought the court system would have worked out part of this but apparently they did not do it to everyone's satisfaction. Commissioner Minton noted to simply say that staff has to come up with enough data to delist those 63 waterbodies before the public comment period ends is impossible to do. He continued that he made a tremendous mistake in 1998 in not objecting to the list but he simply did not know that is what he should do.

Commissioner Perry stated she believes there is some indication from EPA in the administrative record telling the department that on the Consent Decree waters there was not enough documentation and also a letter from DNR to EPA asking what further information they wanted and EPA did not answer that letter. Now it appears there was a complete reversal by all these waterbodies being added back to the list even though EPA stated there was not enough data to have them on the list. Commissioner Perry concluded that the commission is being asked to prove something that was never stated in the first place.

Ms. Crisler responded in 1998 there was an issue about the sufficiency of any information so an MOU was developed that the state would do monitoring which is her only recollection about that sort of information.

Commissioner Perry asked if those waters were added to the 1998 list.

Ms. Crisler stated they were not.

Commissioner Perry noted they have now been added by EPA.

Mr. Costello noted 13 have been added.

Ms. Shannon stated the department had recommended adding one to the list.

Commissioner Perry stated 13 were added on data that EPA's records state was insufficient.

Mr. Costello replied they felt the first report needed more information and requested that from the state.

Commissioner Perry noted it was level 1 data and now staff is being required to bring up higher level data to go back and prove that which was added for a level of data that EPA said wasn't sufficient. She continued that it looks like there are a lot of 305(b) waters that need some sufficient investigation and this needs to be done. Instead everyone is getting caught up in putting things in wrong categories, spending a lot of time public noticing and carrying on about a list rather than going back and doing proper research to make sure we can solve the problem. Commissioner Perry stated she does not believe the commission is completely at fault and this wasn't worked out properly. The 1998 list needs to be looked at to see what is known now and how it can be fixed so resources are properly focused on that which will improve the quality of the water in Missouri. She asked how adding those waters accomplishes this other than creating a lot more paperwork where the commission has to prove there isn't data to prove the waterbodies that were put on the list belong or don't belong.

Mr. Costello stated EPA felt there was sufficient information with the last report from staff that included more chemical monitoring data along with field sheet information.

Chairman Herrmann noted he thought the data was all biological.

Mr. Costello replied there was biological data from the visual benthic survey plus some additional chemical monitoring that was provided at EPA's request which was from fixed monitoring stations on those waters. He continued that this was not for all of those waters but for some.

Commissioner Perry asked if staff proposed to add one waterbody to the list.

Ms. Shannon replied staff proposed to add one of those waters to the 303(d) List.

Ms. Crisler stated additional information was provided.

Commissioner Greene noted stream team or level 1 data is not considered adequate and asked if EPA considers level 1 data sufficient.

John Ford, Water Pollution Control Program Planning Section, stated it's spelled out in the Methodology Document. There are several exceptions where level 1 data is acceptable: where chemical data clearly shows an obvious exceedance and there is no

variability from sample to sample on multiple samples and some visual things like the appearance of large amounts of sewage sludge in a creek. Everything else staff considers level 1, the Methodology Document states is not appropriate.

Commissioner Greene asked if EPA thinks it's appropriate.

Mr. Costello said they do consider it appropriate data.

Commissioner Perry noted EPA thinks level 1 is appropriate even though correspondence has stated that it is not appropriate.

Mr. Costello noted the state provided whatever field sheets they had available and used that to conduct the biotic index on those waters based on the field surveys that were done. That was one of the technical bases for listing some of those waters.

Chairman Herrmann noted one of EPA's documents says an assessment was made because the quotation from the field sheet said there seemed to be a bit more algae in this stream than there were in other streams in the area. He continued that the algae was not quantified but yet EPA chose to say that was impaired so it will be put on the list.

Mr. Costello stated there was other information besides that which was factored into the decision.

Chairman Herrmann noted it was not included in the document that was sent as a public notice.

Mr. Costello stated, through the benthic visual survey, there was data provided through the macroinvertebrate communities that had been looked at during the survey.

Commissioner Perry asked if that was qualitative and not quantitative.

Mr. Costello responded it was a qualitative approach.

Commissioner Perry stated if it's qualitative, it really isn't known what the quantity is and whether or not it's impaired or not, just that it exists.

Mr. Costello replied that was the best information available to EPA to make this assessment.

Commissioner Perry stated it gets back to what is sufficient information and it seems there is a terrible problem for the citizens of the state. They depend on the commission to review something to submit to EPA. EPA finds other documentation that the commission did not have a chance to review so they can change the commission's list but Missouri is responsible to pay for a lot of time and resources to develop TMDLs about which there

has never been notice or a chance to speak about. Commissioner Perry noted it doesn't seem to be in what is put out for public notice so the commission can respond and it doesn't seem very fair.

Mr. Costello asked if the commission has written comments to submit to EPA.

Chairman Herrmann noted the commission has not yet had time to review the comments.

Commissioner Minton asked if EPA has a set of standards or if these waters would have been included if some other EPA region would have reviewed the submittal. He noted there should be a set of standards which the entire nation has to follow.

Commissioner Perry stated there is a Federal Administrative Procedure Act that says an arbitrary and capricious decision cannot be made so there has to be a standard and where is that standard and how does this decision meet that standard.

Commissioner Greene noted river systems vary across the nation and one set of standards would not be adequate for the whole nation.

Commissioner Minton noted he agrees with that and asked if someone else within Region VII EPA would have come up with the same assessment.

Mr. Costello replied this was reviewed by the biologist with the Environmental Services Division. He looked at the data provided by the state which included the monitoring report and the summary and came up with the determination that is being relied on.

Commissioner Minton noted there is not a written set of standards by which these waterbodies are judged for contaminants. He asked if it was possible that another biologist would have assessed the streams differently.

Commissioner Perry asked what happened to EPA's position that this is not sufficient data to put waters on the list. Now EPA says it must be sufficient because we're going to put them on the list.

Ms. Crisler stated the individuals within the agency with the proper expertise reviewed the documentation. If another biologist had done the review, the outcome probably would not have been different because these are the staff who review the sort of biological data that was available to them. The explanation of that review is in the record and it is subject to comment. Ms. Crisler stated if there are issues with that review, comments need to be provided.

Commissioner Perry asked if that is the same biologist who wrote in a letter in the administrative record that this is not sufficient data.

Ms. Crisler responded there were iterations of information that were available to EPA. The submission that EPA started with is not what they ended up with. She explained that EPA made an effort to work with the Department of Natural Resources and to get the additional information to clarify the original submission so that it was more understood.

Commissioner Perry asked if this was after the commission made its submission to EPA.

Ms. Crisler replied it was during the review process when EPA has the responsibility to actually review the submission.

Commissioner Perry asked if there was new information presented to EPA that may not have been presented to the commission.

Mr. Costello replied the data that was provided was data that was presented to EPA for the first time but it was data that had been generated prior to the state's submission.

Ms. Crisler noted EPA can't speak to what information the commission had available to them but can speak to EPA's attempts to clarify the submission in their efforts to adequately review the submittal. There were some questions about certain decisions about waters so EPA asked the state for what data they had to make those decisions in order to clarify the issues. Ms. Crisler noted EPA understands all the information they used was available before that submission. EPA would not request or use data that was available after that.

Commissioner Perry stated the Administrative Record says this data is insufficient and somehow staff brings the data to EPA again after August 7 after the commission's ruling and suddenly the data is all sufficient so that EPA changes a decision that the commission made. She continued that the commission is reeling from the fact that EPA did this in 1998. A lot of this problem stems from exactly that. What the commission submitted to EPA, EPA changed and now the commission is responsible to unchange something that they never did in the first place.

Ms. Crisler stated the information EPA used was information and data that EPA received from the Department of Natural Resources. What information is shared with the commission EPA cannot speak to.

Commissioner Perry noted EPA communicated with staff that the data was insufficient data but after the commission decision it became sufficient and she noted that the commission wasn't notified about that at any time.

Ms. Crisler replied EPA might have had questions about specific data so they asked and perhaps additional clarification was provided rather than new data.

Mr. Costello noted there was a difference in the interpretation of data and EPA made a proposed decision on that. The public comment period is an opportunity to determine whether or not that decision or proposed action should be revised or not.

Chairman Herrmann stated EPA's proposed 2002 303(d) List says on the 26 waters EPA developed a CTI on 8 or 9 of the 13 waters. It made no mention of any other kind of monitoring other than the benthic assessment. There was no mention of chemical determinations and Chairman Herrmann noted he did not believe there were any made on those streams.

Mr. Ford responded some of those sites do have some chemical monitoring but the majority do not.

Mr. Costello stated there was also a category of those 13 waterbodies where EPA did not feel there was sufficient data to make a decision one way or the other and there was a group where EPA concurred with not having to list those. He continued that he thinks chemical data factored into that.

Chairman Herrmann noted there were four that were not listed based on a CTI and there were five which were listed based on a CTI which is an arbitrary assessment by somebody based on a field sheet which certainly is second or third hand information on which to base an assessment.

Mr. Costello replied EPA thought it was useful data for the purposes of their review.

Chairman Herrmann stated according to the Methodology Document prepared by the staff, approved by the commission, and filed as a record of this commission, it is not sufficient data and that's the only thing the commission has to go by. Chairman Herrmann continued that EPA approved the Methodology Document as part of the Consent Decree.

Commissioner Greene noted it's obvious several members of the commission do not agree with what was done but it was known going in that EPA was going to review it and might not agree with the commission. Now is the time to submit comments and make it better the next time.

Chairman Herrmann stated there are 227 stream segments listed minus the 40 for mercury contamination leaves 187 for which there are about 27 TMDLs prepared.

Commissioner Greene noted not all the TMDLs will be completed by the next 303(d) List no matter what the number of streams is. She continued that now is the chance for the commission to say they disagree and why, then move to steps to better get data to be better prepared for the next list because arguing about how the data was interpreted is not getting anywhere. Commissioner Greene noted the methodology needs to be discussed so that everyone is on the same page for the next 303(d) List.

Commissioner Minton noted going back and forth won't solve anything other than EPA will understand firsthand what the commission's concerns are and why the commission has the views it does. He continued that had EPA not attended the meeting today, the commission would not understand how the list was determined. The discussion back and forth is valuable no matter how it is resolved. Commissioner Minton stated he will never agree with the way it was handled but now he kind of regrets that his streams are not on the list.

Mr. Costello noted EPA has had discussions with the state and some of the matters might be resolved since the state seems prepared to provide additional information and documentation to help EPA make a more informed decision.

Commissioner Perry noted everyone is on the same page wanting waters listed that need to be improved. The commission's problem is that they are concerned about a process. There is a lack of communication in developing a good process that everyone understands and can believe in and follow. Commissioner Perry stated from August 2002 until April 29, 2003 the commission had no idea how EPA was approaching it and that sounds like a fundamental fairness issue of process that needs to be clarified. It caught the commission in 1998 and it appears that it caught the commission again. Commissioner Perry noted the process needs to be fixed so everyone is on the same page and understands how this is going to be accomplished or it leads to a lot of concerns about sneaking through back doors and getting things done in ways that are not a part of an official process. She concluded that making sure what's on the list deserves to be on the list is the biggest concern at this time.

Mr. Costello noted perhaps there is a chance to make the process work better based on an improved methodology approach that might incorporate EPA's draft guidance.

Commissioner Perry asked why this hasn't been worked on in the last five years so that everyone is on the same page. The commission could have then made a much better decision.

Chairman Herrmann noted what weight the methodology document has in these determinations also needs to be determined.

Ms. Shannon noted this has been a very difficult task for staff as well as the commission. If the watershed rule is promulgated by EPA it would hopefully clarify some of these issues for everyone. Ms. Shannon noted the commission has been provided a copy of a draft comment letter from the department on the 303(d) List. Staff will continue to work with EPA to provide specific information to help support these comments as well as the comments the commission developed.

Chairman Herrmann suggested the commission be given a few days to review the draft letter.

Commissioner Perry asked for a meeting to explain what will be submitted. She asked if all of the data and information was submitted to the commission prior to the August 7 decision.

Ms. Shannon responded that she did not know that the commission received the raw data prior to their decision but the data that supported the staff decisions in the recommendation to the commission was data that staff was aware of previously. In addition, staff has assessed any additional data or new data that again supported the decisions made by the commission and recommendations by the department and the commission.

Commissioner Perry asked if this addressed the changing of sediment to habitat loss.

Ms. Shannon responded it did and it also brought to the attention of EPA some data that was not accurately entered into a database. Staff went back to the original data again to support staff's original recommendation.

Chairman Herrmann noted there is not time for a meeting but a conference call would be possible before the comment deadline ends.

Commissioner Perry stated she would like to understand the information she has and she is not sure that is possible.

Chairman Herrmann asked if the 60-day comment period is established by law.

Mr. Costello responded the comment period can be extended upon written request from the commission.

Ms. Crisler added if the commission believes it needs additional time to comment, a request to extend the timeframe should be submitted.

Mr. Costello asked that this request be made in writing to Leo Alderman, Director of Water, Wetlands & Pesticides Division, USEPA Region VII, 901 N. 5th Street, Kansas City, KS 66101.

Commissioner Perry moved to **request an extension of the public notice period on the proposed 2002 303(d) List by 30 days**; seconded by Commissioner Easley and unanimously passed.

Robert Brundage, Missouri Ag Industries Council and Premium Standard Farms, urged the commission to submit a comment letter. He continued that he will also submit a request to EPA for an extension to the comment period until July 31. Mr. Brundage commended EPA for the thorough job they did in compiling the administrative record.

Mr. Brundage discussed the standard for taking waters off the list. He noted if a water is listed through a typographical error, or listed without any data whatsoever, this has to fall in the category of a mistake. Mr. Brundage stated there was a flaw in the original analysis in 1998 for adding the sediment streams. EPA misinterpreted Missouri's list and, regarding the sediment streams added to the list, there is no sediment data to put these on the list. Mr. Brundage read from a DNR document that said it would be arbitrary and capricious to assign a single contaminant that may be only a small part of the problem, i.e. sediment. Mr. Brundage continued that the agency has often stated publicly that they do not have adequate data for all the waters. Another document in the administrative record talking about sediment and habitat loss says the basis for those waterbodies being listed for sediment were fish studies and not specific data. In the proposed decision document, EPA quotes a sentence in the original submission of the 303(d) List by the DNR staff that says DNR "is not aware of any data indicating that these waters are no longer impaired." Mr. Brundage noted that sentence was implied in a subsequent letter from the commission that that sentence was retracted and was never meant to be stated in that fashion. He noted it is inappropriate to state that sentence in the administrative record when the Clean Water Commission did not think it was an accurate portrayal of the entire situation.

Mr. Brundage explained there was correspondence back and forth regarding the 26 waterbodies, one of which was a letter from Cheryl Crisler to Scott Totten talking about the monitoring data done on these waterbodies. "According to the monitoring report the visual benthic low flow stream surveys were conducted on two-thirds of the waterbodies during the summer of 2000 and while that work is consistent with the monitoring plan in part, such surveys in and of themselves do not provide an adequate enough basis upon which to determine impairment." "EPA is concerned that this report ... is insufficient basis for making listing decisions." Mr. Brundage continued that the department replied to Ms. Crisler acknowledging their concern that there was inadequate data. The department asked EPA for more parameters of exactly what EPA wanted to see so adequate monitoring could be done. Mr. Brundage stated he believes EPA did not respond to this letter. In correspondence dated July 8, 2002, the Sierra Club also acknowledged that the monitoring done by the department was insufficient for 303(d) listing purposes. "MDNR staffers engaged in drive-by monitoring pulling up on rural road bridges and taking visual observations of the stream and some cursory benthic monitoring. Such drive-by monitoring in no ways meets the prescriptions required in the MOU and are certainly not sufficient for determining whether or not the stream is or is not meeting beneficial or designated uses. The Sierra Club concurs with EPA's assessment of the inadequacy of the DNR monitoring of these waters and finds it contemptible that MDNR would so flagrantly violate the spirit and intent of the MOU which was allegedly negotiated in good faith. The Club is exploring whether such conduct is indeed contempt under the law."

Mr. Brundage stated DNR identified various families of macroinvertebrates through monitoring and, in some instances, took some water chemistry data. That is just one day of data which is level 1 data. Mr. Brundage stated apparently EPA disagrees but the

listing methodology document clearly says level 3 data. He continued the department is working to develop a water quality standard for biocriteria monitoring. EPA had to some degree use judgement to come up with what the standard should be. Mr. Brundage noted when Missouri does adopt water quality standards for biocriteria, a stream will probably not be called impaired based on one day of monitoring.

Commissioner Perry noted Mr. Brundage's request for the public notice period to be open until July 31 would be longer than the 30 days the commission requested. She asked the commission to consider changing its request to the longer extension.

Commissioner Greene asked if it was viable to get an extension of more than 30 days.

Ms. Crisler suggested the commission request the length of time they feel it needs to respond to the public notice.

Commissioner Perry **amended her motion to request an extension of 45 days to the public notice period on the proposed 2002 303(d) List or at least until July 31;** Commissioner Easley accepted this amendment. Motion passed unanimously upon roll call vote.

Request to Revise Designations in Water Quality Standards

Ms. Shannon reported changes have been requested to the Water Quality Standards relating to Outstanding State Resource waters and Metropolitan No-Discharge waters. She continued that if the commission directs staff to proceed with proposed rulemaking regarding this request, there will be a public comment period and a public hearing before the commission before the rulemaking is finalized.

The first request concerns identifying Bull Creek in Christian County as an Outstanding State Resource water. Ms. Shannon explained the requirements for Outstanding State Resource waters are high quality waters with a significant aesthetic, recreational or scientific value that are specifically designated by the Clean Water Commission. She continued that the waters that are currently listed all flow through public land at some point. The requirement for Outstanding State Resource waters states that a discharge shall not cause the current water quality in the streams to be lowered.

Chairman Herrmann noted he does not recall any waters in this area listed under this designation.

Commissioner Greene noted Barry County would be the closest with a listing.

Commissioner Minton asked if the request was to list the entire length of Bull Creek.

Loring Bullard, Watershed Committee of the Ozarks, replied a significant portion of this stream flows through a national forest and he believed the request concerned the entire reach.

Ms. Shannon noted the request addressed the scientific and aesthetic value of this particular stream in support of this request. She continued that there is a concern about development in this part of the state and it is important to protect the existing high quality water.

Commissioner Minton asked if this issue has been reviewed by the community at large.

Mr. Bullard responded the James River Partnership has conducted a study involving SMS and Drury consisting of a biological study of the stream. A public meeting of Bull Creek landowners has been held and this discussion came up at that meeting.

Commissioner Minton asked about minutes from this meeting.

Chairman Herrmann asked if the results of this study would be available if a public hearing is scheduled several months from now.

Mr. Bullard responded the first phase of the study should be complete.

Commissioner Greene noted she has had several citizens bring this issue up to her so there is some local interest.

Commissioner Easley asked what the attitude of the landowners is.

Mr. Bullard explained that the landowners attending the meeting were very interested. Many people have moved out of the Springfield/Branson area along Bull Creek and there are also some agricultural operators in the area.

Commissioner Easley asked what the opinion of the agricultural interest is in the area.

Mr. Bullard replied he does not know how many of the agricultural operators were at the meeting or have commented on the issue.

Commissioner Easley asked if they do not own the vast majority of the land and what impact this would have on future development.

Mr. Bullard noted the development is one of the concerns. It is located between the growth in the Springfield and Branson areas which is moving in that direction. Some of the landowners have expressed concern about the gravel removal, a lot of which is for development projects in the Branson area. The request to look at listing Bull Creek as an Outstanding State Resource water came from the James River Basin Partnership because they were doing the study.

Commissioner Greene noted there is a large part of Bull Creek in federal or state lands.

Commissioner Easley asked what percentage of the land is private versus public.

Mr. Bullard replied there is a significant amount that is public land; much of Bull Creek flows through Mark Twain National Forest.

Ms. Shannon explained the language in the rule that discharge shall not cause the current water quality in the streams to be lowered references a permitted discharge. Another implication is that under the Nonpoint Source Management Plan a relatively high priority is given to projects that will address Outstanding State or National Resource waters.

Ms. Shannon reported that another request has been received regarding Dardenne Creek in St. Charles County. The request was to designate the entire length of Dardenne Creek for Metropolitan No-Discharge. Ms. Shannon explained under Clean Water Commission regulations, a discharge would be prohibited except as specifically described in the rule and there are additional monitoring requirements. The more downstream portion of Dardenne Creek is designated as Metropolitan No-Discharge and this request is for the up stream portion to also be listed. Ms. Shannon noted yesterday she spoke to two of the individuals making this request and they expressed concern about the potential for an increase in the number of wastewater systems discharging into Dardenne Creek with the rapid development in this area.

Commissioner Greene asked how much of Dardenne Creek is not designated Metropolitan No-Discharge and if there were already discharges in the upper portion.

Chairman Herrmann responded there are currently discharges in that area. He continued that this issue was considered by the commission several years ago and was not approved.

Richard Laux, Water Pollution Control Program Permits Section, reported a longer segment than is currently designated had been designated as Metropolitan No-Discharge. A request from New Melle to shorten that up to allow them to take advantage of discharging to that stream rather than up through some recreational lakes was approved by the commission. Mr. Laux explained this request would be adding a portion of Dardenne Creek back rather than a totally new designation. Existing discharges are grandfathered in until something is available or new technology comes about.

Commissioner Greene asked about grandfathering of the existing discharges.

Mr. Laux replied New Melle has a lagoon system and under the current rules it would have to be upgraded to something other than a lagoon system at the end of its current life. The same would occur for a number of other smaller lagoon type facilities in that area. An expansion of an existing plant is a new facility under the rules.

Chairman Herrmann noted the lake development near New Melle pumps over the hill into Dardenne Creek. He asked when the review of the Water Quality Standards will occur.

Ms. Shannon replied EPA conducted the triennial review in 2000 and notified staff of the need to take some action on the Water Quality Standards. She continued that staff is working on that now and plans to open the rule soon.

Commissioner Easley asked when these changes would be complete.

Ms. Shannon replied there are several very challenging issues being addressed with this round of rulemaking and it will be at least a year away due to the rulemaking process.

Commissioner Greene moved that staff **include the requests to designate Bull Creek as an Outstanding State Resource Water and Dardenne Creek as a Metropolitan No-Discharge Water in the next proposed revisions to the Water Quality Standards;** seconded by Commissioner Kelly.

Scott Harding, SCI Engineering, stated that the commission should consider designating Dardenne Creek as a Metropolitan No-Discharge Water only after a significant amount of data is collected.

Chairman Herrmann informed Mr. Harding that a public hearing would be held before any action is taken in this regard.

Mr. Harding continued that in St. Charles County political and environmental forces take over and the mere fact that this has been targeted as a Metropolitan No Discharge stream would perhaps be enough to begin the cycle that limits discharges or perhaps eliminates discharges with the data to support that.

Chairman Herrmann noted that other than a portion of Dardenne Creek there are no streams in St. Charles County on the list.

Mr. Harding noted that is correct but there is a county ordinance that prevents package treatment plants from discharging into Peruque Creek.

Commissioner Perry noted the implication is that this request may be a back door approach to get zoning in St. Charles County and asked if there is zoning in the county.

Mr. Harding replied there is zoning. He continued that the landowners were concerned about development. There is no indication of data collection but the request is based upon wanting to preserve the natural look along the creek.

Commissioner Greene asked if that is not valid.

Mr. Harding responded that any landowner should be able to preserve and protect the waters of the state but to say that wasting disease or other pollutants are the basis for that protection is misleading.

Chairman Herrmann noted the commission can make an intelligent decision through the public hearing process.

Mr. Harding noted he would expect nothing less from the commission after hearing their comments today but that does not account for St. Charles County and the politicians taking their own route and fast tracking a decision before all the data is collected.

Commissioner Hauser asked if this is the only mechanism for getting concrete data to establish whether or not these waters should be listed in this manner.

Mr. Laux explained the Metropolitan No-Discharge designation is not based on collection of data; it's the nature of the stream running through an urban area where children can possibly play in it. He continued the contact issue was the big issue where most of the Metropolitan No Discharge streams were added. Mr. Laux noted he has never seen data presented or discussed in these kinds of designations. It's a designation by the commission to help public health issues with children in particular getting in the streams. The original discussion centered around the safety of children, the fact that the streams aren't designated as being the receiving stream for a number of small discharges. The idea for the designation is to not create a situation where a lot of small discharges go to these urban streams.

Commissioner Perry asked if there is any indication that children are threatened.

Mr. Laux responded some of the discussion regarding the New Melle situation indicated that this stream is very well used as far as a recreational resource. New Melle being an existing facility that had to come up with something new and with limited options is why the commission took the action it did.

Commissioner Perry noted the resources of the department are extremely limited and asked about this action changing monitoring priorities.

Ms. Shannon stated the monitoring is a requirement of the permit and will be conducted by the permit holder. They would have to meet a higher level of compliance and do monitoring.

Commissioner Perry noted this could put a whole new burden on a lot of other landowners which is perhaps the idea so people won't want to buy land in that area.

Mr. Laux replied he believes the commission's focus has been on protecting children and the way to do that was to keep a proliferation of small treatment plants from occurring in these metropolitan areas; people would be forced to do regional planning. He stated

people aren't told they can't develop but they may be told that the proposed location is not acceptable for a discharge. Mr. Laux continued that the commission has been very clear that their goal in these areas is to have large facilities discharging to bigger streams downstream rather than having hundreds of small package plants. The problem is in areas where there is no infrastructure and they do not have the ability to connect to a system. The commission's desire has been to force the regional planning before the development occurs rather than having to deal with it after it has occurred.

Chairman Herrmann stated Rock Creek in Northern Jefferson County is a great example of little treatment plants all the way down the line. This flows through a state park where children play.

Commissioner Perry asked if New Melle is starting to address this problem.

Mr. Laux noted the community's design is chiefly for the development within the city limits.

Responding to Commissioner Perry's question, Chairman Herrmann stated New Melle is near Defiance. He added that residential development is rather heavy around and outside the city.

Commissioner Minton asked if the parties can petition for this relief after the commission begins the rulemaking process if the commission does not approve the request at this time.

Ms. Shannon replied they could make the request at that time but, if the stream was added during the comment period, then there is the question of due process since others would not have been able to comment on waters that were not originally proposed for addition.

Commissioner Minton noted the same could be said regarding the Bull Creek issue.

Commissioner Greene noted individuals can comment on Bull Creek during the public comment period of the rulemaking process.

Commissioner Minton asked about the study that will potentially be completed in a matter of weeks.

Mr. Bullard noted it's a biological monitoring study.

Commissioner Minton stated he would rather defer action on this issue until the next commission meeting since that would give others time to realize that there is a potential for commission action on this issue.

Commissioner Greene stated Bull Creek has already been used by the Department of Natural Resources as a reference stream. The study Mr. Bullard is talking about is

because the National Fish & Wildlife Foundation chose it as a reference stream. It is already recognized as a biologically important reference stream. The ongoing study will not tell anything further.

Chairman Herrmann stated the purpose of the public hearing is to alert others of a proposed action and permit them to comment before the commission, which is the best way to notify the public.

Commissioner Perry asked if the area around Bull Creek has zoning.

Mr. Bullard replied he believes Christian County has planning but he was not sure about zoning.

Commissioner Perry noted her concern is that this is something that can be handled locally. She continued that it is not up to the commission to affect land use in an area that they are not even familiar with when there is the ability to solve problems locally working together probably with a better result.

Commissioner Greene noted the regulation also says "it has a high level of aesthetic or scientific value," which is already shown, "have an undeveloped watershed," which this is relatively undeveloped with only one percent urban, "and be located on or pass through lands which are state or federally owned," which a large part of it does.

Commissioner Perry noted she thinks there are two different waterbodies being requested for addition for two different purposes.

Commissioner Greene withdrew her motion with Commissioner Kelly accepting the withdrawal.

Commissioner Greene moved that staff **include the request to designate Bull Creek as an Outstanding State Resource Water in the next proposed revision to the Water Quality Standards**; seconded by Commissioner Kelly. Motion carried with the following vote: Commissioner Easley: No; Commissioner Greene: Yes; Commissioner Hauser: No; Commissioner Kelly: Yes; Commissioner Minton: No; Commissioner Perry: Yes; Chairman Herrmann: Yes

Commissioner Greene moved that staff **include the request to designate Dardenne Creek as a Metropolitan No-Discharge Water in the next proposed revision to the Water Quality Standards**; seconded by Commissioner Kelly. Motion failed with the following vote: Commissioner Greene: Yes; Commissioner Hauser: No; Commissioner Kelly: Yes; Commissioner Minton: No; Commissioner Perry: No; Commissioner Easley: No; Chairman Herrmann: Yes

Closed Session

Commissioner Perry moved to **go into closed session** at approximately 12:10 to discuss legal, confidential, or privileged matters under section 610.021(1), RSMo; personnel actions under Section 610.021(3), RSMo; personnel records or applications under Section 610.021(13), RSMo or records under Section 610.021(14), RSMo which are otherwise protected from disclosure by law; seconded by Commissioner Greene and unanimously passed.

Commissioner Easley moved to **reconvene the open session** of the meeting at approximately 1:25 p.m.; seconded by Commissioner Perry and unanimously passed.

FY 03 319 Nonpoint Source Grant Applications

Ms. Shannon reported the commission directed staff to look at the 319 nonpoint source grant application projects and ranking based on the discussion during the April 23 commission meeting. The commission asked staff to look at what projects would likely be eligible for incremental funding. This was done and only reflects the original ranking done by the review committee. Ms. Shannon explained she understood that projects should be focused on implementation of practices that would protect water quality.

Commissioner Perry stated she did not see where she said this in the minutes. She continued that her emphasis was on doing those projects, and educational projects are extremely important, that can be linked to having a result. Educational programs need to be targeted to those places that an improvement in the quality of the environment can be seen. Commissioner Perry noted this was not exclusive. She continued that people who control the land for whatever purpose are the ones who are on the front line of affecting what happens with nonpoint source pollution. They should be a targeted audience to help them be educated to make those changes that are going to have a positive impact on the environment. Some of these programs were very expensive and using a large percentage of the money that is available. Commissioner Perry stated she is very concerned the commission has a limited pot of money like everyone else and applicants are coming to the commission to fund whatever it is they need but that won't actually impact the environment. The environment can be impacted other than through an implementation or restoration project. Commissioner Perry stated the program she was pushing is to educate land users who volunteered to have a program where they were going to self-police and develop their own program; someone who hasn't traditionally been before the commission in the past. She continued the point was that in four years the commission can go back and say the environment is better off because of this educational program. The public at large needs to be educated. Commissioner Perry stated she is still not sure if incremental funding is for implementing actual practices like demonstration projects. She suggested that perhaps directive needs to be given on how to focus the other pots to target audiences that are likely to lead to an environmental impact that is measurable.

Commissioner Kelly stated she agrees with everything Commissioner Perry said about targeting land users and their efforts need to be encouraged. She continued that she believes stopping there is very short sighted; the commission needs to look long-term. Commissioner Kelly noted ignorance can hurt people and if the general public doesn't have someone to show them and help them understand, how can they be expected to understand? She concluded that this is part of the commission's job.

Commissioner Perry replied she is not arguing with that but she doesn't want to put all the money in that pot to the exclusion of not changing the environment.

Commissioner Kelly continued that it's good to hold people responsible where they show the commission tangible effects but you don't always have tangible results in front of you; you don't turn away because of that. She stated applicants were asked to submit projects that included education and it's difficult at this point to tell them that's not what the commission had in mind.

Commissioner Perry stated the second sentence of the Request For Proposals received by the applicants says the goal is to protect or improve the quality of Missouri's impaired or threatened waters.

Commissioner Kelly asked what the 319 policy has been in the past.

Ms. Shannon replied when Section 319 was first implemented, the specific federal language was that this money was to be used for grants to demonstrate, educate and inform regarding protection of water from nonpoint sources of water pollution. Staff was only allowed to fund projects that did that for about the first ten years of the program. Implementation of practices could not be funded except as it pertained to a demonstration project. In 1999, Congress made the incremental money available and it was specifically directed to do restoration of impaired waters. Since that time, it has been used to develop or implement a watershed plan on a 303(d) listed water. Ms. Shannon noted the definition of how that money is to be used has changed every year since 1999.

Commissioner Minton asked if the money is split half and half.

Ms. Shannon replied there is a little less money for the incremental funding. The base money is \$3,065,300 and the incremental money which must be used for developing or implementing watershed plans on 303(d) listed waters is \$2,314,400.

Commissioner Minton noted staff was going to research what happens to the money if the commission chooses not to use it all for 319 grants.

Ms. Shannon reported she asked EPA what happens to the money if staff does not submit a grant application for all this money since 319 funds department staff as well as these projects. EPA indicated a grant application would be accepted for a portion of the funds and an amendment to request the remainder of the funds could be submitted later.

Responding to Commissioner Perry's question regarding the funds staff did not apply for, Ms. Shannon replied EPA would keep the funds.

Commissioner Easley asked how long EPA would keep these funds.

Ms. Shannon responded EPA would like to have an application by August 1, 2003. They would like to have the funding to the state by the end of September but it does not go away at the end of September. Ms. Shannon stated she believes the funds can be held until October 1, the next federal fiscal year.

Commissioner Minton asked if it would be wise to retain some of these monies to address department issues and asked how much flexibility the commission has in this regard.

Ms. Shannon replied EPA gets the funding to the department and staff's task is to use that funding in a way that implements the state's nonpoint source management plan and achieves those goals. Everything that staff does must meet what's in the nonpoint source management plan. If someone asks to fund something that's not in the plan, that can't be done. The Department of Natural Resources implemented a competitive process to do some of the work that needs to be done to implement the nonpoint source management plan. Ms. Shannon explained this competitive process allows staff to direct funds in a competitive manner to those that can do the work. That does not preclude keeping money within the Department of Natural Resources to do directed projects, specific projects or activities, within the context of the nonpoint source management plan.

Commissioner Minton stated the money then does not need to be spent on a 319 grant.

Ms. Shannon replied it does not have to be spent on a 319 subgrant.

Commissioner Minton asked if there has been consideration by staff to ask the commission for a larger percentage of the 319 funds to do directed projects with commission oversight.

Ms. Shannon replied the 20 percent is for specific activities associated with monitoring and planning. If a project was done within the Department of Natural Resources for implementation and education that is like the other projects, it would not fall within the 20 percent. She continued that staff recommended holding back \$180,000 for funding two positions for expanding activities that are already done within the department. One of these is for volunteer water quality monitoring where requests for training far exceeds the department's ability to provide it. Staff is not able to enter the data into the database to get it in a form that is readily useable. Discussions have occurred with the Outreach and Assistance Center regarding adding a person to this effort. Volunteer water quality monitoring activities are currently funded with 319 money.

Responding to Commissioner Perry's question, Ms. Shannon indicated this is the volunteer water quality monitors which is largely associated with stream teams from the Department of Conservation.

Commissioner Perry asked how much is spent on this.

Ms. Shannon replied one full time employee is funded with 319 within the Water Pollution Control Program and there is another full time employee working on it through funding from another source. Many of the expenses associated with this are also funded from 319 money.

Commissioner Easley asked if this has to come out of the base funds.

Ms. Shannon replied technically some of the work could come out of the incremental if the focus was on a watershed.

Commissioner Perry asked what would be done with the \$180,000.

Ms. Shannon replied this is to increase efforts associated with volunteer water quality monitoring by funding a staff person in the Outreach and Assistance Center and providing some additional resources for equipment and materials. The other activity proposed for funding with 319 through the department is the stormwater education activities about which Glenn Lloyd spoke at the April commission meeting. Ms. Shannon explained the activity portion of this work is currently funded with a 319 subgrant. The positions that do the work are not and are at risk. The request is to fund one position and additional materials to conduct the training. Ms. Shannon noted these are the two activities that staff identified as being very high priority and where there is a need of assistance.

Commissioner Minton noted staff is in dire circumstances along with everyone else and he does not want the 319 funds to become the financial plug for their budget problems. He stated that if the money is to be targeted to an agency, he wanted the Department of Natural Resources to be the first agency to be targeted. Commissioner Minton asked how much more funding staff could utilize.

Ms. Shannon replied she has not evaluated this but additional money could be used for monitoring of the 303(d) listed streams and additional work could be funded at the Outreach and Assistance Center.

Commissioner Minton asked if staff has ever targeted a particular watershed for a grant.

Ms. Shannon replied this was done for the FY 01 funding because there were not enough requests to use the money. A targeted request for proposals was done for the Elk River watershed which was very successful.

Commissioner Perry reported a group of landowners in Vandalia received education from the 319 grant and completely cleaned up the atrazine out of the watershed. She continued that is the sort of success story that this money is intended for. Commissioner Perry requested a presentation on the Longbranch project at the July commission meeting.

Ms. Shannon reported FAPRI, the sponsor of the Upper White River Watershed project, has indicated that the amount should be reduced by \$50,000 to \$437,234.

Responding to Commissioner Minton's question regarding trimming excess from the projects, Ms. Shannon reported \$65,000 was recently cut from a grant.

Commissioner Minton asked that the commission be provided an update on how much if anything is saved from the individual projects that are funded and how much was awarded to additional projects. He continued that he feels there is a lot of waste in the projects.

Ms. Shannon noted her staff shares this concern.

Commissioner Perry stated the Request for Proposals does not indicate what is acceptable or unacceptable and some projects are extremely heavy in salaries. She asked if there are guidelines such as certain aspects of the grant should not be more than a certain percentage of the entire request.

Ms. Shannon replied there are federal caps on the amount you can pay an individual. She continued that this is something staff carefully reviews. Projects vary and it tends to be subjective in the review.

Commissioner Greene noted it takes people to do these things; they have the abilities and knowledge and extra people have to be hired and they realize it's for a specific amount of time. There is a review process and you rarely get what is applied for.

Ms. Shannon stated once the conceptual project is approved for funding, staff irons out the details and increases the deliverables or decreases the amount of funding to get the biggest bang for the buck.

Commissioner Perry asked what happens to the money if funding is decreased.

Ms. Shannon replied the money is redirected somewhere such as funding the top ranking project for the next year which increases the money for the next year. Some funding has been redirected toward water monitoring due to budget constraints and some money was used for development of a 319 web page.

Chairman Herrmann asked Ms. Shannon to consider how much money would be needed to fund worthwhile staff activities.

Verel Benson, FAPRI, reported the Upper White River Watershed project is to quantify the effects of practices that people might employ in a particular watershed. The project was set up to work with individuals in Arkansas and the watershed initiative to try to quantify in such a way to work with stakeholders to let them make better choices. A \$50,000 funding decrease in the project is due to getting funding from another source to work on Finley Creek in the watershed. If other funding sources become available, the amount will be reduced further.

Mr. Brundage, Mo-Ag, asked the commission to consider funding the Mo-Ag Watershed project this year. He explained that the Mo-Ag Industries Council is a trade association of agri-businesses in Missouri made up of ag chem dealers, fertilizer sales, seed sales, grain elevators, feed mills, and certified crop advisors with a large network of members across the state. The Mo-Ag proposal requests money to use Mo-Ag's network of dealers and people across the state to help leverage their relationship with farmers, landowners, and some 303(d) impaired watersheds to take advantage of the special relationship members have with the farmers.

Loring Bullard, Watershed Committee of the Ozarks, reported they have had success with 319 funds. He continued that the minutes from the April 23 commission meeting mentioned that there was an excess of money flowing to the Southwest part of the state. Mr. Bullard stated there is a lot of community and business support for water quality in that part of the state because they realize water quality is a great part of the economy in the area and it's very important to their continued livelihood to protect the streams and lakes in that part of the state. He continued that all of the projects have been partnership efforts encompassing a wide variety of agencies and organizations. The area has a lot of growth with some 303(d) listed streams which causes concerns and problems. Mr. Bullard stated being a good grant writer is important to receiving funding but beyond that the work has to be done by the people and success has to be documented. He noted that he feels one reason the committee has been successful in obtaining additional 319 funding is because their projects have been successful and there are documented areas where water quality has improved in some of the targeted watersheds.

Mr. Bullard explained the committee has been working steadily on the Valley Watermill Watershed Education and Demonstration Center project for a number of years. He continued that it is estimated to be about a \$7 million project. An 18-member citizen based task force is working with the Watershed Committee of the Ozarks to bring this project together. This site is in a 303(d) watershed listed as being impaired for fecal coliform bacteria. Mr. Bullard stated there are a lot of problems with onsite wastewater systems due to the Karst topography. The community onsite wastewater and stormwater grant was applied for to develop a site for training installers, inspectors and designers of onsite systems to get better systems put in so there is less problem with septage leaching into the streams and groundwater. Springfield is the first city in the state to get the Phase I stormwater permit. Greene County is one of the first to get the Phase II stormwater permit. This is a big issue with the growth in the area and a location was needed to

demonstrate different technologies, best management practices, and the essential features of designing the best management practices related to stormwater.

Mr. Bullard noted there was some confusion regarding the existing Valley Watermill 319 grant. The onsite wastewater and stormwater training center would be on the Valley Watermill site. The other existing 319 grant is used for restoration activities in the lake itself. That lake will serve as a regional best management practice for a rapidly developing watershed upstream. Mr. Bullard explained some wetland filtering systems will be created in the upper end as a demonstration. Part of the money in this grant is cost shared with landowners upstream and several who have streambank erosion and other problems are already interested.

Commissioner Perry asked if the money has already been received for this project.

Mr. Bullard replied the project began in 2001 and was designed as a clean lakes grant because the project was to look at what is impairing the lake. The first phase of that funding was used to do a watershed assessment along with SMS. The second phase is design and construction of the best management practices and the projects upstream with landowners.

Commissioner Perry asked about the amounts for the grants.

Mr. Bullard reported the first phase for the assessment was \$40,000 and the second phase is \$330,000 including the design and construction of the wetland area, cleaning of the sediment from the lake, and cost share money for the upstream landowners.

Chairman Herrmann noted he had discussed with Mr. Hull that he had misinterpreted past meeting minutes regarding the amount of \$480,000 for this project.

Mr. Bullard replied that was the total that would be available over the entire life of the grant. He noted this 319 grant was basically for the restoration component upstream and in the lake itself.

Ms. Shannon explained 319 grants are typically multi-year grants. Rarely is the entire amount awarded initially but incrementally so that staff is sure the project is making appropriate progress before the next amount of money is awarded.

Regarding the community onsite project and the reference to the need to train people in the Springfield area rather than to travel to Columbia where this training is already available, Commissioner Perry asked how many people are involved in the training and how many people in the Springfield area are installing wastewater and stormwater systems.

Mr. Bullard replied any installer working in the county has to be certified and there are over one hundred certified just in Greene County. Installers typically work in several counties so there are probably several hundred in that region.

Commissioner Perry asked if they already have the training if they are certified.

Mr. Bullard replied they need to have a certain amount of classroom time. The county sends people to North Carolina to receive training on alternative systems and design and maintenance of alternative systems. Mr. Bullard noted there are unique soils and geology in southwest Missouri and there may be methods that work better for these sites than other parts of the state.

Chairman Herrmann asked if this is accessible through Southwest Missouri State University instead of Columbia.

Mr. Bullard replied it is not at this time although SMS is a partner in this project.

Chairman Herrmann noted it was determined quite some time ago that individual onsite systems are under the purview of the Department of Health. He suggested that the Department of Health or the County Health Department should be providing this training.

Mr. Bullard stated the Springfield/Greene County Health Department and Greene County Resource Management is contributing funding toward this project.

Mr. Bullard provided a letter from the Springfield City Manager supporting the community onsite wastewater/stormwater grant. The city sees this fitting in well with the city's Phase I stormwater permitting and as an essential piece of the public awareness and education part of their stormwater permit.

Responding to Commissioner Minton's question, Mr. Bullard replied the social marketing grant came about after discussions with some other watersheds groups and organizations in the area; it's not directly linked to the Valley Watermill project. Mr. Bullard further explained that this was a need that came up when the White River summits between Missouri and Arkansas began. A minigrant was used for social marketing techniques to get people to the summit, which was very successful. The idea is to change behavior, which have a long-term impact on nonpoint source issues. Mr. Bullard stated the community onsite wastewater/stormwater grant is the highest priority in terms of the grant applications submitted.

Commissioner Greene noted it is estimated that 80-90 percent of the septic tanks in the little towns in Southwest Missouri are not functioning properly because they were not installed or maintained properly.

Chairman Herrmann noted the Health Department probably has numbers showing this applies statewide.

Commissioner Minton asked if the \$333,000 mentioned earlier is coming from the \$480,000.

Mr. Bullard replied there is around \$110,000 remaining to develop more cost share projects upstream and possibly an outdoor education center at the Valleymill site.

Commissioner Easley asked what other grants were received.

Mr. Bullard reported they received a planning grant of \$447,000 for the whole grant but the workplan is not yet written for this. The plan is to use this money for design of the buildings, a business plan, and any assessments that may need to be done at the site.

Commissioner Minton noted Mr. Bullard had mentioned spending \$7 million on this project and asked why not rent a building rather than build one.

Mr. Bullard responded the \$7 million includes the value of the 100 acres of land. The entire project is to be a demonstration which gets at the issue of how do we want to see people develop.

Commissioner Minton asked where the remainder of the money needed for the project will come from.

Mr. Bullard responded money does not need to be raised for the land but the committee will probably be involved in a capital campaign for the facility after design is further along.

Commissioner Perry questioned the estimate of \$7 million.

Mr. Bullard noted he developed the estimate and it may be off. The cost for the building should be from \$3-4 million with possibly \$1 million for demonstration projects.

Commissioner Perry noted she is looking to the future for other 319 grants that might be related because it wasn't explained.

Mr. Bullard stated he does not envision other 319 grants except demonstration and educational features. This has been in the planning stage for five years and it appears the time is right to move forward to protect the water quality.

Lois Reborne, Bryant Watershed Project, provided a handout on benthic macroinvertebrates using digital photographs of sculptures done by middle school students as part of the pilot project called Art Stream. She explained less than 18 percent of the grant proposal has to do with publication on the web site. It is largely a community based education project. This project was designed to meet the needs for watershed education in the area. Community volunteers will be sent to classrooms, to set up stream days to learn what it is to monitor streams, and to learn what a benthic

macroinvertebrate is. The project will feature existing best management practices by having students report on the processes and end results. The area to be covered includes 1,900 square miles of watershed. This is a mostly rural area where most people have septic systems and use well water. Ms. Reborne reported on four letters of support from public officials who feel this kind of education project is appropriate for their area.

Commissioner Perry asked if the \$2,000 from the West Plains Bank is a donation in addition to matching funds the bank may be contributing.

Ms. Reborne responded that would be used toward the match. She continued that most of the match is volunteer time which is a lot of community people involved in this project.

Ms. Reborne mentioned the person responsible for education at the Howell County Soil & Water Conservation District is part of a task force to implement the recruitment and training of volunteers. She noted that the Presiding Commissioner of Howell County is concerned that people do not understand the groundwater problems in the area.

Ms. Reborne explained that there were more than 350,000 hits to the web site for the month of April. The hits fall off during the summer because schools and universities are the principal users of the web site. The usage pattern has doubled over last year. Ms. Reborne reported there are 450 pages on this web site and detailed these pages. She explained up to this time this reflects \$5,000 of 319 money with the remainder coming from local investment.

Commissioner Perry asked if this project is linked to the MoWIN program.

Ms. Reborne replied that whole program was based on this project which is just beginning. The Bryant Watershed Project will serve as consultants to the MoWIN program.

Responding to Commissioner Perry's question, Ms. Reborne reported most of the 319 money is going to support four part time salaries. Because of the large area to be covered, flexibility to hire people on a contract basis was built in so that someone local can be hired to work with a school so less money is used for travel.

Ms. Reborne explained about half the households in the area have lagoons, septic tanks or straight pipes. When kids are taught about nonpoint source pollution and the problems associated with groundwater and septic tanks, they go home to that situation. Ms. Reborne noted it's critically important to educate the young people in the area and she asked for funding of this project.

Edward Templeton, District Conservationist with the Natural Resource Conservation Service in Farmington, introduced Dr. Charles Gamble, project manager, and Charles Perkins, St. Francois County Soil & Water District Technician. He noted this is the first time the district has applied for a 319 grant and they are pleased with their ranking.

Ms. Shannon reported there is work currently being done within the Outreach and Assistance Center, beyond what was previously mentioned, that is appropriately funded with 319 money and is at risk of being eliminated. There is a full time educator to administer the Water Education for Teachers project which is a very effective, high quality curriculum used nationwide. This position has been funded with General Revenue in the past. Onsite assistance on farms is where staff goes to farms, a rural property, or industrial sites to provide assistance on how to prevent pollution. 319 funds could appropriately be used for portions of this work. Commercial pesticide applicator training is where users of pesticides are informed about protection of groundwater and how to properly apply and manage pesticides to protect water quality and could be funded from 319 funds. Staff would like to update the Unified Watershed Assessment since it gets at some of the issues the commission has raised over the last year. A subgrant might need to be awarded to get the necessary expertise but it is a high need.

Ms. Shannon noted one of the areas of real need is in the area of watershed planning. EPA has continued to stress that they want watershed plans done in these areas before they will fund 319 projects. She suggested setting aside a significant portion of the incremental funds this year to allow people to apply for a watershed planning grant on 303(d) listed waters so that staff can get them ready to apply for funding to implement those plans in future years. Some additional funding for water quality monitoring associated with the planning and associated with some of the projects that have been funded would also be needed.

Commissioner Easley asked if dollars could be assessed for each of these.

For project WET, onsite assistance, and pesticide applicator training, Ms. Shannon estimated \$250,000 for one year which would include materials associated with project WET.

Commissioner Perry noted there has been some communication regarding the department ending all technical assistance to agriculture. She asked if this would take the place of that.

Mr. Totten replied the loss of the ag assistance unit in the Outreach and Assistance Center was a result of the budget reductions. These positions were 100 percent General Revenue funded.

Commissioner Perry asked how much funding was cut.

Ms. Shannon replied she has heard \$300,000 so this would cover that loss and expand some of the activities.

Commissioner Perry asked what it would cost to fund the other items.

Ms. Shannon estimated \$100,000 for Unified Watershed Assessment but did not have an estimate for the other areas.

Responding to Commissioner Easley's question, Ms. Shannon stated these funds would come from the base funds. The watershed planning efforts would be out of the incremental funds.

Commissioner Easley asked for an estimate on this cost.

Ms. Shannon estimated \$500,000 would allow funding of about 20 projects.

Commissioner Perry asked if there are any estimates for water quality monitoring.

Ms. Shannon responded she has numbers for how much different types of activities would cost but she does not know what the needs are.

Commissioner Perry asked if these numbers are in addition to the 32 percent and if there is a breakdown for the 32 percent.

Ms. Shannon replied the 32 percent funds a number of department staff who do administration of the 319 money, TMDL development and monitoring activities, along with volunteer water quality monitoring activities. \$200,000 is held back for monitoring associated with nonpoint source TMDLs. Ms. Shannon noted a large percentage goes toward staff.

Commissioner Perry asked for a breakdown of FTEs. She asked if the money would be spent in grants.

Ms. Shannon stated she would assume the watershed funds would be subgrants with very strict requirements for who is eligible, what activities could be applied for, and cost limits.

Commissioner Minton asked if staff could bring a plan to the commission on how they will spend this money if the commission allocates the money for that. He continued that he would want to monitor the spending.

Ms. Shannon replied that could be done and even the work done by the Outreach and Assistance Center will be managed as though it were a subgrant to a separate entity.

Commissioner Perry noted she's not yet ready to determine how to spend the money.

Chairman Herrmann asked if a decision can be deferred until the next meeting.

Ms. Shannon pointed out that at least a partial grant request needs to be submitted to EPA soon so staff can continue to be funded.

Commissioner Easley commented three of the four projects that staff requested approval on today total \$1,011,000 and would fall under incremental funding. He recommended approving the three projects from incremental leaving \$528,000.

Commissioner Perry noted if Ms. Shannon had more time she could further pursue the watershed planning.

Commissioner Minton noted he did not understand there was this much flexibility with the money and he's not sure what to do with the options.

Commissioner Greene noted she would like to see money awarded to some of these projects. She asked about funding some of the projects from the base funds. Research shows that education can cause behavior change and programs for kids can cause parental behavior change. Commissioner Greene suggested funding projects 1-7 because they are the highest ranked. From the score the projects received from the interagency committee, the biggest gap occurs between projects 7 and 8. The commission could then determine whether to fund some of the other projects or assign funding to staff.

Chairman Herrmann asked what the minimum amount is that is needed to protect the funds necessary to keep staff operating.

Ms. Shannon estimated \$1 million would be needed to continue to fund staff.

Chairman Herrmann asked if staff could apply to EPA for that amount and then get information to the commission so they can make a decision at the next meeting.

Ms. Shannon stated staff could also apply to fund part of the projects at this time.

Commissioner Kelly asked how much it would cost to fund the first seven projects plus the \$1 million.

Ms. Shannon noted that would be around \$3 million.

Chairman Herrmann noted if this would keep the staff operating for the next several months, the commission can get the additional information on cost and make a decision based on that information at the July meeting.

Commissioner Greene moved to fund projects 1-7 as recommended by the Interagency Review Committee, allot \$1 million for Department of Natural Resources needs, leaving approximately \$2 million to further consider Department of Natural Resources proposals presented today and the remainder of the projects on the list; seconded by Commissioner Kelly.

Commissioner Perry suggested also funding the Upper White River project for a lesser amount.

Chairman Herrmann noted this is picking and choosing and he does not agree with funding the first 7 projects. He noted he prefers Commissioner Easley's suggestion with the addition of money for department staff.

Commissioner Perry stated her suggestion is to fund projects 1-7 plus the MoAg project for \$148,000 and the Upper White River for \$375,000.

Commissioner Greene withdrew her motion with agreement from Commissioner Kelly.

Commissioner Perry moved to **fund projects 1-7 as recommended by the Interagency Review Committee, the MoAg Watershed Project for \$148,000, and the Upper White River Project for \$375,000**; seconded by Commissioner Easley.

Commissioner Perry noted some savings can be assumed because staff will find some unnecessary cost in the projects. Staff will realize that those costs can come out to be spent elsewhere.

Motion passed with the following vote: Commissioner Perry: Yes; Commissioner Easley: Yes; Commissioner Greene: Yes; Commissioner Hauser: No; Commissioner Kelly: Yes; Commissioner Minton: No; Chairman Herrmann: No.

Commissioner Minton moved that **the remainder of the 319 funds be allocated for the best discretionary use of staff with commission oversight**; seconded by Commissioner Kelly.

Commissioner Perry asked if this money would be for the six areas staff discussed today.

Commissioner Minton noted that is correct and there is still flexibility to address any other projects on the list if there is money remaining.

Motion passed with the following vote: Commissioner Easley: Yes; Commissioner Greene: Yes; Commissioner Hauser: No; Commissioner Kelly: Yes; Commissioner Minton: Yes; Commissioner Perry: Yes; Chairman Herrmann: No.

Commissioner Easley asked how soon staff will work with the applicants to see how far down the dollars can be adjusted.

Ms. Shannon noted staff has to have EPA approval before they can spend a lot of time on this.

Ms. Shannon asked what information the commission wants to see at the July meeting.

Commissioner Perry noted the commission wants to see how staff will spend the money.

Ms. Shannon noted staff will apply to EPA for funding for projects 1-7, the Mo-Ag Watershed project, the Upper White River Watershed project, and the \$1 million for the department and bring a recommendation for the expenditure of the remaining funding.

Commissioner Easley asked that the application be submitted to EPA by the July meeting.

Commissioner Perry asked for targeting and what the requirements would be and an exact focus within the six categories discussed for the balance of the funds.

Legal Matters

Dismissal of Appeal 343 Sharpe Land & Cattle Company

Deborah Neff, Assistant Attorney General, reported Sharpe Land & Cattle Company filed an appeal to its permit and the Department of Natural Resources filed suit against Sharpe in Circuit Court for violations to the Missouri Clean Water Law. The Circuit Court case was resolved in a Consent Judgment part of which was dismissal of this appeal with prejudice. Ms. Neff recommended entering an order dismissing the appeal with prejudice.

Commissioner Minton moved to **dismiss with prejudice Appeal 343 Sharpe Land & Cattle Company**; seconded by Commissioner Greene and unanimously passed.

The commission signed the order dismissing this appeal with prejudice.

Dismissal of Appeal 372 Willamette Industries (Weyerhaeuser)

Ms. Neff explained that Willamette Industries had filed an administrative appeal of several of the terms of its permit. Willamette has been acquired by Weyerhaeuser and is winding down its affairs. Weyerhaeuser reached settlement with the Department of Natural Resources and has agreed to dismiss the appeal with prejudice. Ms. Neff recommended entering an Order dismissing the appeal with prejudice.

Commissioner Greene moved to **dismiss with prejudice Appeal 372 Willamette Industries (Weyerhaeuser)**; seconded by Commissioner Easley and unanimously passed.

The commission signed the order dismissing this appeal with prejudice.

Dismissal of Appeal 376 Kansas City Todd Creek Wastewater Treatment Facility

The City of Kansas City has filed a motion to dismiss this appeal without prejudice. Ms. Neff explained in order for the city to file a new appeal, a new permit would have to be issued or a modification made to the permit. She recommended dismissal of appeal 376 without prejudice.

Commissioner Greene moved to **dismiss without prejudice Appeal 376** Kansas City Todd Creek Wastewater Treatment Facility; seconded by Commissioner Minton and unanimously passed.

The commission signed the order dismissing this appeal without prejudice.

Dismissal of Appeal 381 Holcim, Inc.

Ms. Neff reported this appeal has been resolved through a settlement agreement in which Holcim, Inc. agreed to voluntarily dismiss its case with prejudice. Ms. Neff recommended dismissal of this appeal with prejudice.

Commissioner Perry asked if there was any chance this would be appealed.

Ms. Neff replied there were no intervenors so it's not a situation where a new certification has been issued which would give appeal rights to anyone who was an aggrieved party.

Commissioner Greene moved to **dismiss with prejudice appeal 381** Holcim, Inc.; seconded by Commissioner Hauser and unanimously passed.

The commission signed the order dismissing this appeal with prejudice.

Dismissal of Appeal 380 St. John's Bayou and New Madrid Floodway Project

Ms. Neff reported a settlement agreement has been entered between the Army Corps of Engineers and the Department of Natural Resources. A Motion to Dismiss was filed but the Hearing Officer has given the Intervenor until June 25 to respond. Ms. Neff recommended tabling until after the Hearing Officer makes a report and recommendation to the commission.

Commissioner Minton moved to **table action on the St. John's Bayou and New Madrid Floodway Project until a report and recommendation is received from the hearing officer**; seconded by Commissioner Perry and unanimously passed.

Other

MALMRI Meeting

Mr. Totten reported MALMRI is meeting in Macon in July and there will be a tour of the Longbranch project as well as the ethanol plant.

Procedural Rules

Mr. Brundage stated the commission might want to be proactive and counter some of the justifications for the super commission that was raised during the last legislative session.

He suggested moving forward with developing procedural rules for the commission on handling appeals, possibly starting with a workgroup. Mr. Brundage stated that litigating under the commission's rules without procedural rules makes litigating commission appeals very difficult and expensive.

Mr. Brundage noted 2002 was the third year of the triennial review of the Water Quality Standards. He recommended including ammonia and dissolved oxygen water quality standards in the next round of proposed changes.

Budget and Legislative Discussion

Mr. Totten reported the Governor's recommended budget to the legislature included a cut of the general revenue funds to support the Water Pollution Control Program 401 staff. An additional one time federal grant for 2003 was used for these 3 staff. These staff will have to become part of the base grant for 2004 and this will be negotiated with EPA next week. The Regional Offices lost 6.5 administrative staff in the Jefferson City Regional Office and that office has been closed saving \$190,000 in salaries, along with several thousand in expense and equipment, and \$90,000 in office lease costs. The technical staff have been reassigned to the other five regions along with the counties previously assigned to the Jefferson City Regional Office. Legislative action further cut one staff person from the Water Pollution Control Program, six more positions in the regional offices, and will result in some kind of division reorganization due to the loss of an additional position, the director of the Public Drinking Water Program. The director who was a 34-year department employee has decided to retire rather than bumping other staff.

Mr. Totten noted this year's budget was balanced with \$900 million worth of one-time money that will have to be found to keep the same level next year. Water Pollution Control Program has seven FTEs left on general revenue. Six are doing stormwater grants and loans and one is doing letters of approval. Regional Offices have about \$2 million in general revenue left which is the regional director, the support staff, and some technical staff working in the drinking water and solid waste areas.

Mr. Totten reported the 2005 budget strategy is starting by looking to see where the general revenue can be replaced with other funds or grants. Four years ago the department had about \$30 million in general revenue and is now down to about \$8.4 million or two percent of the budget. Almost all of that is for staff costs.

Senate Bill 36 was filibustered on the final day. House Bill 257, the omnibus agriculture bill, included some provisions for agriculture, some conservation measures, some amendments to the Clean Water Act to bring it in line with the federal CAFO regulations. There were some omissions and an analysis between the federal rule and Missouri's present requirement and the House bill.

Commissioner Perry asked for a copy of the analysis.

Chairman Herrmann asked for a copy of House Bill 257.

Commissioner Perry asked about the no stricter than legislation.

Mr. Totten informed Commissioner Perry the no stricter than legislation did not pass.

Future Meetings

A meeting will be scheduled in the Lake of the Ozarks area for October 22. A December 3 meeting will be held in the central Missouri area.

Adjournment

There being no further business to come before the commission, Chairman Herrmann adjourned the meeting at approximately 3:55 p.m.

Respectfully submitted,

Jim Hull
Director of Staff